IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

OPENTV, INC. and NAGRA FRANCE S.A.S., Plaintiffs, v. VERIZON COMMUNICATIONS INC., VERIZON SERVICES CORP., VERIZON CORPORATE RESOURCES GROUP, LLC, VERIZON CORPORATE SERVICES GROUP INC., VERIZON DATA SERVICES LLC, VERIZON MEDIA, LLC, VERIZON AND REDBOX DIGITAL ENTERTAINMENT SERVICES, LLC, and AOL INC., Defendants.	Civil Action No. 6:15-cv-951 Judge Rodney Gilstrap JURY TRIAL DEMANDED

DEFENDANTS' MOTION TO TRANSFER VENUE

TABLE OF CONTENTS

Page

INTRODUCTION 1

STATEMENT OF FACTS 1

A. Plaintiffs 1

B. Defendants 3

RELEVANT STANDARDS 6

ARGUMENT 7

I. THIS ACTION "MIGHT HAVE BEEN BROUGHT" IN THE NORTHERN DISTRICT OF CALIFORNIA 7

II. THE PRIVATE AND PUBLIC FACTORS WEIGH HEAVILY IN FAVOR OF TRANSFER TO THE NORTHERN DISTRICT OF CALIFORNIA 7

A. Judicial Economy Weighs Heavily In Favor Of Transfer 7

B. The Local Interest Weighs Heavily In Favor Of Transfer 9

C. The Relative Ease Of Access To Sources Of Proof Favors Transfer 10

1. Plaintiffs 11

2. Defendants and Third Parties 11

3. Comparing The Ease Of Accessing These Sources of Proof 12

D. The Convenience Of Attendance For Willing Witnesses Favors Transfer 13

E. The Availability Of Compulsory Process Weighs In Favor Of Transfer 14

F. The Remaining Public Interest Factors Are Neutral 15

CONCLUSION 15

TABLE OF AUTHORITIES

Page

ACQIS LLC v. EMC Corp.,
67 F. Supp. 3d 769 (E.D. Tex. 2014) 10, 11, 13

Adaptix, Inc. v. HTC Corp.,
937 F. Supp. 2d 867 (E.D. Tex. 2013) 14

Affinity Labs of Tex. v. Samsung Elecs. Co., Ltd.,
968 F. Supp. 2d 852 (E.D. Tex. 2013) 7, 10

Bandspeed, Inc. v. Acer, Inc.,
No. 2:10-cv-215, 2011 WL 3648453 (E.D. Tex. Aug. 15, 2011) 8

Blue Spike, LLC v. Texas Instruments, Inc.,
Nos. 6:12-cv-499 & -558, 2014 WL 1374045 (E.D. Tex. March 13, 2014) 10

Burger King Corp. v. Rudzwicz,
471 U.S. 462 (1985) 7

Chrimar Sys., Inc. v. Juniper Networks, Inc.,
No 6:15-cv-00618, Dkt. No. 231 (E.D. Tex. Jan. 11, 2016) 15

Chrimar Sys., Inc. v. Ruckus Wireless, Inc.,
No. 6:15-cv-638, Dkt. No. 109 (E.D. Tex. Dec. 9, 2015) 14

Core Wireless Licensing S.a.r.l. v. LG Elecs. Inc.,
No. 2:14-cv-911, 2015 WL 5143395 (E.D. Tex. Sep. 1, 2015) 8

Davis v. Inland Dredging Co. LLC,
No. 10-1788, 2011 WL 446551 (E.D. Tex. Feb. 4, 2011) 7

In re Genentech, Inc.,
566 F.3d 1338 (Fed. Cir. 2009) 12, 13

In re Hoffman La-Roche,
587 F.3d 1333 (Fed. Cir. 2009) 9

Kleiner v. Southwest Airlines Co.,
No. 5:08-cv-218, 2008 WL 4890590 (W.D. Tex. Nov. 4, 2008) 15

Lone Star Document Mgmt., LLC v. Catalyst Repository Sys., Inc.,
No. 6:12-cv-164, 2013 WL 5496816 (E.D. Tex. Mar. 15, 2013) 9

McCloud v. McClinton Energy Group., L.L.C.,
No. 5:14-cv-620, 2014 WL 6388417 (W.D. Tex. Nov. 14, 2014) 15

Neil Bros. Ltd. v. World Wine Lines, Inc.,
425 F. Supp. 2d 325, 329 (E.D.N.Y. 2006) 13

On Semiconductor Corp. v. Hynix Semiconductor, Inc.,
No. 6:09-cv-390, 2010 WL 3855520 (E.D. Tex. Sep. 30, 2010)....................................9, 13, 14

OpenTV, Inc. v. Apple, Inc.,
No. 14-cv-1622, 2015 WL 3544845 (N.D. Cal. June 5, 2015)..2, 8, 9

Phil-Insul Corp. v. Reward Wall Sys., Inc.,
No. 11-53, Dkt. No. 106 (E.D. Tex. Feb. 10, 2012) 14

Realtime Data LLC v. Teradata Operations, Inc.,
No. 6:15-cv-470 (E.D. Tex. Jan. 20, 2016)..8

Sanger Ins. Agency, Inc. v. HUB Int'l, Ltd.,
No. 2:13-cv-528, 2014 WL 5389936 (E.D. Tex. Mar. 25, 2014) 10

In re Toyota Motor Corp.,
747 F.3d 1338 (Fed. Cir. 2014)...6

TracBeam, LLC v. Apple, Inc.,
No. 6:14-cv-680, 2015 WL 5786449 (E.D. Tex. 2015)...15

U.S. Ethernet Innovations, LLC v. Acer, Inc.,
No. 6:09-cv-448, 2010 WL 2771842 (E.D. Tex. July 13, 2010) 7

In re Volkswagen of Am., Inc.,
545 F.3d 304 (5th Cir. 2008) 6, 7, 13

Wireless Recognition Techs. LLC v. A9.com, Inc.,
Nos. 2:10-cv-364, -365, -577, -578, 2012 WL 506669 (E.D. Tex. Feb. 15, 2012) 9

Statutes

28 U.S.C. § 1400(b) 7

28 U.S.C. § 1404(a) 6, 7, 8

INTRODUCTION

Pursuant to 28 U.S.C. § 1404(a), Defendants move to transfer this case to the Northern District of California ("NDCA"), where Plaintiffs' U.S. headquarters are located and related lawsuits are pending on the *same* patents that are asserted against Defendants. This is not a case where some of the witnesses and evidence are located in the Eastern District of Texas ("EDTX"), and the rest of the witnesses and evidence are scattered throughout the country. Plaintiffs' principals and inventors; Defendants' developers and engineers; and numerous third party witnesses are concentrated in NDCA. On the other hand, this case does not have any meaningful connection to the EDTX. Moreover, if this case is not transferred to NDCA, there is a real risk that the courts will reach inconsistent rulings on the same patents. Because all of the relevant factors weigh in favor of transfer, the Court should grant Defendants' motion to transfer.

STATEMENT OF FACTS

A. Plaintiffs

Plaintiffs OpenTV, Inc. ("OpenTV") and Nagra France S.A.S. ("Nagra") are subsidiaries of Kudelski SA ("Kudelski"). Dkt. No. 1 at ¶ 17. OpenTV is a "Delaware Corporation whose principal place of business in the United States is located in San Francisco, California." Dkt. No. 1 at ¶ 15. Additionally, OpenTV has a second office in NDCA in Mountain View, California. (Ducca Decl. at ¶ 2). Nagra is a French corporation headquartered in Paris, (Dkt. No. 1 at ¶ 16), but Nagra refers to OpenTV's San Francisco headquarters as "NAGRA USA." (Ducca Decl. at ¶ 2). Plaintiffs' parent, Kudelski, also considers OpenTV's San Francisco headquarters as its headquarters for Integrated Digital TV. (Ducca Decl. at ¶ 3). Accordingly, the center of U.S. operations for all of these entities (*i.e.*, OpenTV, Nagra, and Kudelski) is in NDCA. Meanwhile, OpenTV, Nagra, and Kudelski do not appear to have any presence in EDTX. (Ducca Decl. at ¶ 31).

Plaintiffs sued Netflix and Apple for patent infringement of many of the same patents that it now asserts against Defendants; and Cisco and Yahoo! filed declaratory judgment actions against Plaintiffs. These cases, which were all filed in, or transferred to NDCA, are summarized in the following table.

Case	Overlapping Patents	Status
Open TV, Inc. v. Netflix, Inc., Civ. Act. No. 3:14-cv-1525 (N.D. Cal., Dec. 19, 2012) (transferred from Delaware) (*Id*. at Dkt. No. 26) ("*Netflix I*")	US 7,055,169 US 6,233,736 US 6,018,768 US 7,409,437 (family member of asserted US 7,243,139)	Closed
Cisco Sys., Inc. et al. v. OpenTV Inc. et al., Civ. Act. No. 5:13-cv-282 (N.D. Cal., Jan. 18, 2013) ("*Cisco*")	US 5,761,606 (family member of asserted US US 6,233,736)	Closed
OpenTV, Inc. v. Netflix, Inc., Civ. Act. No. 3:14-cv-1525 (N.D. Cal., Apr. 14, 2014 ("*Netflix II*")		Closed
Open TV, Inc. v. Apple, Inc., Civ. Act. No. 3:14-cv-1622 (N.D. Cal. Apr. 9, 2014) ("*Apple I*")	US 7,900,229	• *Markman* hearing held Apr. 22, 2015 (Dkt. No. 160); • *Markman* order construed 3 terms of the '229 patent (Dkt. No. 173 at 10-14); • Case Pending
OpenTV, Inc. v. Apple Inc., Civ. Act. No. 5:15-cv-2008 (N.D. Cal. 2015) ("*Apple II*")	US 7,055,169 US 6,233,736	• *Markman* hearing scheduled for May 12, 2016 (Dkt. No. 58) • Case Pending
Yahoo! Inc. v. Kudelski SA, Civ. Act. No. 5:16-cv-349 (N.D. Cal. Jan. 21, 2016) ("*Yahoo!*")	US 7,055,169 US 6,233,736 US 7,409,437 (family member of asserted US	• Filed Jan. 21, 2016

	7,243,139)	

Five of the named inventors for the asserted patents—Jean-Rene Menard, Debra Hengsen, Dongmin Su, Vincent Dureau, and Ludovic Pierre—appear to be currently located in NDCA. (Ducca Decl. at ¶¶ 7, 10-11, 18-19). Two additional inventors, Jack Hidary and Nova Spivack, reside in New York and Los Angeles, respectively, but appear to be currently in positions that often take them to NDCA. (Ducca Decl. at ¶¶ 13-14). Jack Hidary is a Board Member of Palo Alto Prize, a science competition in Palo Alto, California. (Ducca Decl. at ¶ 13). Nova Spivack is the CEO of Bottleneck, a company with offices in Los Angeles and San Francisco, California. (Ducca Decl. at ¶ 14). Messrs. Dureau, Hidary, and Spivack do not work for Plaintiffs and are therefore, third parties. (Ducca Decl. at ¶¶ 13-14, 18). The remaining nine inventors are located throughout the world in locations such as France, Illinois, and New York; but none are located in EDTX. (Ducca Decl. at ¶¶ 5-6, 8-9, 12, 15-17, 20, 22).

B. Defendants

Plaintiffs accuse the following products of patent infringement: go90, Aol On, Fios TV, and Redbox Instant. (Dkt. No. 1 ¶ 3).

Go90 is a social entertainment platform that provides access to live and on demand video. (Ambeault Decl. at ¶ 5). The vast majority of relevant witnesses and documents for go90 are located in San Jose, California in NDCA. (*Id.* at ¶ 6). Indeed, over 100 of Defendants' employees working on the planning, research and development, and design of go90 are located in San Jose, California, while fewer than a dozen individuals whose responsibilities relate primarily to go90 work in Defendants' other facilities. (*Id.*). The witnesses working in San Jose, California include Wallace Colyer, Vice-President, Product Development, who is responsible for technical development of go90; James Long, Director, Product Development – Client, who is also responsible for the technical development of go90; Srividhya Narayana, Director, Product Development – Platform, who is also responsible for technical development of go90; and Cyrill Glockner, Director, Product Management, who is responsible for the planning and design of go90. (*Id.* at ¶ 7). Moreover, the vast majority of relevant documents are either stored at Defendants' San Jose office or are accessible from there. (*Id.* at ¶ 8). Other relevant witnesses and documents for go90 are located in Basking Ridge, New Jersey and New York, New York, including David Altarescu, Director, Product Marketing, in New York, New York, responsible for go90 marketing; and Daniel Murphy, Director, Financial Planning and Analysis, Basking Ridge, New Jersey, responsible for finance functions related to go90. (*Id.* at ¶¶ 6-7). Defendants are not aware of any relevant witnesses or documents for go90 in EDTX. (*Id.* at ¶¶ 10-11.)

Aol On offers video streaming services to Aol users. (Srilapa Decl. at ¶ 4). While AOL's employees are in numerous locations, (*Id.* at ¶¶ 5, 8), the vast majority of the relevant witnesses are on the West Coast—including the San Francisco Bay Area; Beverly Hills, California; and Bellevue, Washington—as well as New York, New York, and Dulles, Virginia. (*Id.*). For example, Bala Chandrasekaran, VP of Account Management, in San Francisco, is responsible for all post-sale interactions on the video platform; Steven In, Head of Video Product, in Bellevue, leads the product team responsible for Aol On; and Michael Hyman, Senior Vice President, in Bellevue, is responsible for product strategy and engineering for the video platform. (*Id.* at ¶ 6). Moreover, the vast majority of relevant documents are stored in offsite servers in cloud storage and are accessible from the offices located in NDCA. (*Id.* at ¶ 7). Defendants are not aware of any relevant witnesses or documents for Aol On in EDTX. (*Id.* at ¶ 10).

Fios TV is the name under which certain video services are offered to Verizon customers.

(Gallagher Decl. at ¶ 4).[1] FiOS TV customers use set-top boxes and certain software applications to access video programming and interactive services. (Gallagher Decl. at ¶ 4.) Defendants do not manufacture the set-top boxes, which are purchased from Arris Group, Inc. (“Arris”) and Technicolor SA (“Technicolor”) (which recently acquired the set-top box business from Cisco). (*Id.* at ¶ 6; Groat Decl. at ¶ 3.) Relevant witnesses and documents are located in Horsham, Pennsylvania, not in the Eastern District of Texas. (Groat Decl. at ¶¶ 4-5, 7-10). The relevant witnesses and documents are located primarily in Basking Ridge, New Jersey; New York, New York; Temple Terrace, Florida; Irving, Texas; and Waltham, Massachusetts. (Gallagher Decl. at ¶¶ 7-8). Defendants are not aware of any relevant witnesses or documents for Fios in EDTX. (*Id.* at ¶¶ 8-9). On the contrary, relevant Fios witnesses include John Gallagher, Executive Director, Basking Ridge, New Jersey, responsible for product development of Fios services offered to consumers; Sriram Kalidindi, Director, Irving, Texas, responsible for the development and commercialization of set-top box software; Sanjay Ahuja, Technical Manager, Irving, Texas, responsible for the development and commercialization of Fios Mobile; Ashraf Shehata, Director, Temple Terrace, Florida, responsible for Fios TV quality assurance; Alexander Laparidis, Director, Waltham, Massachusetts, responsible for Fios TV product certification; Rob Niessen, Basking Ridge, New Jersey, responsible for tracking Fios TV financial information; Heather McDavitt, Executive Director, Basking Ridge, New Jersey, a product leader for Fios TV; and Stephen Cremen, Director, Basking Ridge, New Jersey, responsible for the Fios TV customer experience. (*Id.* at ¶ 7).

Redbox Instant was a streaming-video service that ceased operation on October 7, 2014.

[1] Defendants have announced that they expect to divest their Fios TV assets in California, Florida, and Texas to Frontier Communications at the end of the first quarter of 2016. (Ducca Decl. at ¶¶ 21, 33).

(Ambeault Decl. at ¶ 13). When Redbox Instant was still in operation, the vast majority of relevant employees and documents were in Basking Ridge, New Jersey; Oakbrook Terrace, Illinois; and New York, New York. (*Id.* at ¶¶ 14, 16). Relevant witnesses include Jack Gallagher, former Chief Technology for Redbox Instant by Verizon, Basking Ridge, New Jersey; Jim Morgan, former Chief Financial Officer for Redbox Instant, Basking Ridge, New Jersey, responsible for financial functions; and Matt Nadler, former Director, Marketing for Redbox Instant by Verizon, Basking Ridge, New Jersey. (*Id.* at ¶ 15). Defendants are not aware of any relevant witnesses or documents for Redbox Instant in EDTX. (*Id.* at ¶¶ 17-18).

RELEVANT STANDARDS

"For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought . . . ." 28 U.S.C. § 1404(a). The Fifth Circuit considers "private" and "public" factors to decide whether transfer is warranted. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312 (5th Cir. 2008). The private factors are: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make a trial easy, expeditious and inexpensive." *Id.* (citation omitted). The public factors are: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflicts of law or in the application of foreign law." *Id.*

"[A] moving party . . . must . . . clearly demonstrate that a transfer is '[f]or the convenience of parties and witnesses, in the interest of justice.'" *Id.* at 314. The moving party need not, however, show "that the transferee forum is *far* more convenient." *In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014). Indeed, "[t]he Court will afford less deference to the Plaintiff's choice if the Plaintiff does not reside in that chosen forum." *Davis v. Inland Dredging Co. LLC*, No. 10-1788, 2011 WL 446551, at *2 (E.D. Tex. Feb. 4, 2011).

ARGUMENT

This action should be transferred to NDCA because (1) the relevant witnesses and documents are concentrated there; (2) there is no meaningful connection to EDTX; and (3) some of the asserted patents are currently being litigated there. As shown below, all of the relevant factors weigh in favor of transfer.

I. THIS ACTION "MIGHT HAVE BEEN BROUGHT" IN THE NORTHERN DISTRICT OF CALIFORNIA

"The preliminary question under § 1404(a) is whether a civil action 'might have been brought' in the destination venue." *Volkswagen*, 545 F.3d at 312. "A civil action for patent infringement may be brought in the judicial district where the defendant resides . . . ." § 1400(b).

Here, Defendants offered or had offered Fios TV, go90, Redbox Instant, and Aol On in NDCA at the time this case commenced. If Plaintiffs' allegations are accepted as true, Defendants have "purposefully directed" their activities towards residents of NDCA, and thus are subject to personal jurisdiction in that district. *See Burger King Corp. v. Rudzwicz*, 471 U.S. 462, 476 (1985). Accordingly, this action might have been brought in NDCA.

II. THE PRIVATE AND PUBLIC FACTORS WEIGH HEAVILY IN FAVOR OF TRANSFER TO THE NORTHERN DISTRICT OF CALIFORNIA

A. Judicial Economy Weighs Heavily In Favor Of Transfer

"All of the public and private interest factors are part of a transfer of venue analysis, but judicial economy can be a paramount consideration." *Affinity Labs of Tex. v. Samsung Elecs. Co., Ltd.*, 968 F. Supp. 2d 852, 858 (E.D. Tex. 2013) (internal quotation marks omitted); *see also U.S. Ethernet Innovations, LLC v. Acer, Inc.*, No. 6:09-cv-448, 2010 WL 2771842, at *3 (E.D. Tex. July 13, 2010) ("Courts in this district have consistently recognized the pronounced significance of judicial economy in the § 1404(a) analysis in patent cases."). Requiring multiple courts to simultaneously address issues common to multiple cases on the same patents "impose[s] a significant burden on [the defendant], consume[s] scarce judicial resources, and create[s] a risk of inconsistent adjudication, all of which are considerations § 1404(a) was designed to avoid." *Realtime Data LLC v. Teradata Operations, Inc.*, No. 6:15-cv-470, Dkt. No. 35, at 10 (E.D. Tex. Jan. 20, 2016); *see also Bandspeed, Inc. v. Acer, Inc.*, No. 2:10-cv-215, 2011 WL 3648453, at *4 (E.D. Tex. Aug. 15, 2011) ("[J]udicial economy considerations strongly favor transferring [a] case" when "litigating the patents-in-suit almost simultaneously in [the transferor district] and the [transferee district] would be a waste of judicial resources and risk inconsistent outcomes."); *Core Wireless Licensing S.a.r.l. v. LG Elecs. Inc.*, No. 2:14-cv-911, 2015 WL 5143395, at *7 (E.D. Tex. Sep. 1, 2015) (deciding a case in the same district as a prior case involving some of the same patents "leverage[s] the intuitional knowledge gained from [the prior case] in quickly and efficiently resolving the parties' dispute in the instant matter").

When Plaintiffs filed the present complaint, ***five*** related lawsuits had proceeded in NDCA – three are closed (*Netflix I*, *Netflix II*, and *Cisco*), and two are pending (*Apple I* and *Apple II*). And now a third related lawsuit (*Yahoo!*) is also pending. NDCA has construed or will construe patents that are currently asserted against ***both*** Apple and Defendants ***and*** that Yahoo currently seeks to invalidate.[2] Across the five previous lawsuits, NDCA has experience with Plaintiffs and ***five*** of the seven asserted patents: the '169, '139, '229, '736, and '768 patents. *Supra* at 2-3. In

[2] Judge Gilliam of NDCA issued a claim construction opinion construing disputed terms of the '229 patent (*OpenTV, Inc. v. Apple, Inc.*, No. 14-cv-01622, 2015 WL 3544845, at *5-8 (N.D. Cal. June 5, 2015)), and Judge Davila of NDCA is set to preside over a claim construction hearing on the '169 and '736 patents in May of this year (the *Apple* II case at Dkt. No. 58). The date for the claim construction hearing in the *Yahoo!* case has not yet been set.

contrast, this Court has no previous experience with OpenTV or any of the asserted patents. (Ducca Decl. at ¶ 32).

Because both *Apple* cases and the *Yahoo!* case are currently pending, there is a real risk of inconsistent rulings or results if this case is not transferred to NDCA. *On Semiconductor Corp. v. Hynix Semiconductor, Inc.*, No. 6:09-cv-390, 2010 WL 3855520, at *7 (E.D. Tex. Sep. 30, 2010) (noting that failing to keep co-pending cases involving the same patents in the same district "raise[s] serious issues for judicial economy and the possibility of inconsistent results or claim constructions").

Because the NDCA has extensive experience with Plaintiffs and the asserted patents, this factor "strongly weighs in favor of transfer." *Id*.

B. The Local Interest Weighs Heavily In Favor Of Transfer

Local interest determination involves a comparison of the localized interest of the two forums. *Lone Star Document Mgmt., LLC v. Catalyst Repository Sys.,* No. 6:12-cv-164, *Inc.*, 2013 WL 5496816, at *6 (E.D. Tex. Mar. 15, 2013). Here, NDCA has a particularized interest in deciding this case due to Plaintiffs' and Defendants' activities in that District, whereas EDTX has no such interest.

NDCA has a strong localized interest in this case as the home of a large number of individuals responsible for the design and development of two of the four accused products—go90 and Aol On. *See supra* at 3-4; *see also Wireless Recognition Techs. LLC v. A9.com, Inc.*, Nos. 2:10-cv-364, -365, -577, -578, 2012 WL 506669, at *6 (E.D. Tex. Feb. 15, 2012). That interest is even stronger where there are allegations of willful patent infringement (as Plaintiffs have made here (Dkt. No. 1 at ¶¶ 91, 104, 117, 127, 141, 150, 161)), because such allegations "call[] into question the work and reputation of several individuals residing in or near that district and who presumably conduct business in that community." *In re Hoffman La-Roche*, 587 F.3d

1333, 1336 (Fed. Cir. 2009).

Moreover, Plaintiffs, themselves, are either residents of NDCA or at least consider NDCA the hub of their U.S. operations. *See supra* at 2. In addition, at least the ’169, ’229, and ’463 patents stem from the work of their inventors in NDCA. *See supra* at 3. Five of the seven inventors still live in the area, and two inventors, who are now third parties, are in positions that have connections to NDCA. *See id*. Accordingly, NDCA has a “clear” interest in deciding this case. *See Sanger Ins. Agency, Inc. v. HUB Int’l, Ltd.*, No. 2:13-cv-528, 2014 WL 5389936, at *5 (E.D. Tex. Mar. 25, 2014) (finding that a division of a district where Plaintiff is headquartered “has a clear localized interest in resolving a dispute involving one of its residents (Plaintiff).”); *Affinity Labs*, 2013 WL 5508122, at *3 (“The Northern District of California has an interest in protecting intellectual property rights that stem from research and development in Silicon Valley.”).

In contrast, EDTX has no localized interest in this case. Not one of Plaintiffs or Defendants is organized under the laws of the State of Texas or has their headquarters within this District. Dkt. No. 1 at ¶¶ 15-16, 42-48, 56. Moreover, the accused products and services are sold throughout the United States, and therefore, the “citizens of [EDTX] do not have a particularized interest in deciding the dispute simply based on product sales within the venue.” *Blue Spike, LLC v. Texas Instruments, Inc.*, No. 6:12-cv-499 & -558, 2014 WL 1374045, at *5 (E.D. Tex. March 13, 2014). Accordingly, the “local interests” factor also heavily favors transfer.

C. The Relative Ease Of Access To Sources Of Proof Favors Transfer

The “relative ease of access to sources of proof” turns on the “presumed location [of relevant documents] in relation to the transferee and transferor venues.” *ACQIS LLC v. EMC Corp.*, 67 F. Supp. 3d 769, 775 (E.D. Tex. 2014).

1. **Plaintiffs**

NDCA is Plaintiffs' home, and Defendants expect they will not be able to point to a single individual or piece of evidence in EDTX. To date, OpenTV is both headquartered and maintains a second office in NDCA. *See supra* 1. San Francisco is also the home of "NAGRA USA," and the center of Nagra's U.S. operations. *See id.* Even Kudelski identifies San Francisco as one of its corporate headquarters for Integrated Digital TV, the very technology at issue here. *See id.*.

As Plaintiffs' headquarters (or at least its center of U.S. operations) is in NDCA (*see id.*), the majority of Plaintiffs' witnesses and documents are likely there. *See ACQIS*, 67 F. Supp. 3d at 775 ("Presumably, the bulk of discoverable material relating to a corporate party is located at the corporate headquarters."). Moreover, Plaintiffs do not appear to have any witnesses or documents within EDTX. *See supra* at 1.

Next, of the sixteen inventors of the asserted patents, five of them are located in NDCA. *See supra* at 3. In addition, two more of the inventors appear to have positions that would presumably require them to often travel to NDCA, but not EDTX. *See id.* The remainder of the inventors are located in New York, France, and Illinois. *See id.* No inventors appear to be located in EDTX. *See id.*

2. **Defendants and Third Parties**

Defendants' sources of proof are concentrated in NDCA, and none of them are located in EDTX. This is especially true for the go90 and Aol On products. Defendants' supporting declarations set forth in detail the locations of relevant employees and information. For example, Wallace Colyer, Vice-President, Product Development; James Long, Director, Product Development; Srividhya Narayana, Director, Product Development – Platform; and Cyrill Glockner, Director, Product Management for the go90 product, are in San Jose. *See supra* at 3-

4. Bala Chandrasekaran, VP of Account Management, in San Francisco, is responsible for all post-sale interactions on the Aol video platform. *See supra* at 4. In addition, Steven In, Head of Video Product, who leads the product team responsible for Aol On, and Michael Hyman, Senior Vice President, responsible for product strategy and engineering for the video platform, are in Bellevue, Washington. *See id.* While not NDCA, Bellevue is significantly closer to NDCA than to EDTX. S*ee* Ducca Decl. at ¶ 28. While other witnesses are located throughout the United States in various locations, Defendants are not aware of a *single* witness in EDTX. *See supra* at 3-6. Moreover, relevant documents are either located (1) in the offices where the relevant individuals are located; or (2) on servers accessible from offices in NDCA. *See id.* None of these documents are located in EDTX. *See id.*

The main sources of proof outside of NDCA for the accused products are located in Beverly Hills, California; New York, New York; Dulles, Virginia (near Washington, DC); Irving, Texas; Basking Ridge, New Jersey; Temple Terrace, Florida; and Waltham, Massachusetts. *See id.* No relevant sources of proof are located in EDTX. *See id.* Some of these locations are on the West Coast, and it will be significantly easier to access them from NDCA than from EDTX. *See supra* at 3-4. Accessing proof in locations other than the West Coast will be about equally difficult from either NDCA and EDTX. *See supra* at 3-6; *see also In re Genentech*, 566 F.3d 1338, 1345 (Fed. Cir. 2009) (finding that accessing sources of proof in Washington D.C. will be about equally difficult from Texas and from California).

3. Comparing The Ease Of Accessing These Sources of Proof

While neither EDTX nor NDCA contain all relevant sources of proof, NDCA is the location of (1) the vast majority of proof pertaining to go90; (2) a significant source of proof pertaining to Aol On; (3) Plaintiffs, themselves; and (4) a number of inventors. In contrast, not a single known source of proof is in EDTX. The remaining sources of proof, located throughout the U.S. and world, will be difficult to access from either district and should, therefore, be assigned little if any weight. *See Genentech*, 566 F.3d at 1345.[3] Accordingly, the "relative ease of access to sources of proof" factor weighs in favor of transfer.

D. The Convenience Of Attendance For Willing Witnesses Favors Transfer

"The convenience of the witnesses is probably the single most important factor in transfer analysis." *Genentech*, 566 F.3d at 1343 (quoting *Neil Bros. Ltd. v. World Wine Lines, Inc.*, 425 F. Supp. 2d 325, 329 (E.D.N.Y. 2006)). "[T]he convenience of third-party witnesses is given greater weight than the convenience of party witnesses." *On Semiconductor Corp.*, 2010 WL 3855520, at *6. Requiring witnesses to travel to a remote district to attend trial imposes "not only . . . monetary costs, but also the personal costs associated with being away from work, family, and community." *See Volkswagen*, 545 F.3d at 317.

There are *no* relevant witnesses in EDTX. *See supra* at 1, 3-6. On the other hand, Plaintiffs' U.S.-based witnesses; five to seven of the inventors (some of which are now third parties); at least four go90 witnesses; and one key Aol On witness are all located in NDCA and would find that district more convenient. *See supra* at 1, 3-5. The witnesses on the West Coast would also have significantly less travel time to NDCA than to EDTX. *See supra* at 3-4. Likewise, given that travel to the Tyler area usually requires an airline transfer, or an extended car ride from a larger airport, the travel time to San Francisco is more convenient even for witnesses travelling from Paris, France; Chicago, Illinois; New York, New York; Basking Ridge, New Jersey; Dulles, Virginia; Bellevue, Washington; Los Angeles, California; and Boston Massachusetts. (*See* Ducca Decl. at ¶¶ 24-30). *See also ACQIS*, 67 F. Supp. 3d at 776 ("[T]he existence or non-existence of direct flights can impact the analysis of travel time. Thus, regardless of the 'straight line' distances . . ., if 'travel time' distances favor the transferee venue, then this factor will favor transfer.") (citation omitted). Since other witnesses will be about equally inconvenienced by travelling to either EDTX or NDCA for trial, their convenience should be attributed minimal, if any, weight. *See supra* at 3-6; *see also On Semiconductor Corp.*, 2010 WL 3855520, at *5.[4]

---

[3] Even if access to evidence in Irving, Texas, which is part of the Northern District of Texas, is deemed to be more convenient to EDTX, the fact that *some* proof for Fios TV is located there cannot outweigh the ease of access to the significantly *more* proof in the Northern District of California.

Accordingly, the "convenience of attendance for willing witnesses" factor weighs in favor of transfer, too. *Phil-Insul Corp. v. Reward Wall Sys., Inc.*, No. 11-53, Dkt. No. 106 at 5 (E.D. Tex. Feb. 10, 2012) ("This factor heavily favors transfer when a substantial number of material witnesses reside in the transferee venue and no witnesses reside in the transferor venue.").

E. The Availability Of Compulsory Process Weighs In Favor Of Transfer

"Transfer is favored when a transferee district has absolute subpoena power over a greater number of non-party witnesses [than the transferor district]." *Adaptix, Inc. v. HTC Corp.*, 937 F. Supp. 2d 867, 874 (E.D. Tex. 2013). In evaluating this factor, a court "will not speculate regarding the willingness of identified third parties." *Chrimar Sys., Inc. v. Ruckus Wireless, Inc.*, No. 6:15-cv-638, Dkt. No. 109 at 7 (E.D. Tex. Dec. 9, 2015).

Here, any of Plaintiffs' former U.S.-based employees, as well as Defendants' former employees in the San Jose and San Francisco area, will likely remain within the absolute subpoena power of NDCA and outside the absolute subpoena power of EDTX. *See* supra 1, 3-4

---

[4] Even if this principle is deemed to not apply to Defendants' employees in Irving, Texas, none of which work in this District, the fact that *some* potential witnesses for Fios TV are located there cannot outweigh the convenience of *the vast majority* of key witnesses for go90 and *a large number* of key witnesses for Aol On in the Northern District of California, much less the combined convenience of these and other Defendants' witnesses, third party witnesses, and Plaintiffs' own witnesses.

see also Kleiner v. Southwest Airlines Co., No. 5:08-cv-218, 2008 WL 4890590, at *4 (W.D. Tex. Nov. 4, 2008) ("It is foreseeable that a number of Defendant's former officers and employees, many of whom likely reside in or near [the transferee venue], may be called upon to testify. . . . [T]hese potential non-party witnesses would not be subject to compulsory process in this Court but would be subject to process in the [transferee venue]."). For instance, the sole inventor of the '229 patent, Vincent Dureau, is a former OpenTV employee, and the subpoena power of NDCA will be necessary to compel his testimony at trial. *See supra* at 3.

In contrast, there are no known third party witnesses that reside or work within 100 miles of this Court, and all known third party witnesses are, therefore, either outside this Court's absolute subpoena power or at least potentially able to quash this Court's trial subpoenas due to substantial expense. *See McCloud v. McClinton Energy Group., L.L.C.*, No. 5:14-cv-620, 2014 WL 6388417, at *4 (W.D. Tex. Nov. 14, 2014); *see also Chrimar Sys., Inc. v. Juniper Networks, Inc.*, No 6:15-cv-618, Dkt. No. 231 at 7 (E.D. Tex. Jan. 11, 2016) (attributing little weight to the ability to subpoena third parties located more than 100 miles away). The "availability of compulsory process" factor should, therefore, favor transfer, but in no circumstances does it weigh against transfer.

F. The Remaining Public Interest Factors Are Neutral

Both EDTX and NDCA have about equal court congestion, are both familiar with the law that will govern this case, and this case raises no issues of conflicts of law or the application of foreign law. *TracBeam, LLC v. Apple, Inc.*, No. 6:14-cv-680, 2015 WL 5786449, at *7 (E.D. Tex. 2015). Accordingly, the remaining public interest favors are neutral.

CONCLUSION

For all of the reasons above, Defendants' motion to transfer should be granted and this action should be transferred to the Northern District of California.

DATED: January 25, 2016

Respectfully submitted,

By: */s/ Michael E. Jones*

Michael E. Jones
State Bar No. 10929400
mikejones@potterminton.com
Patrick C. Clutter, IV
State Bar No. 24036374
Patrickclutter@potterminton.com
POTTER MINTON
A Professional Corporation
110 N. College, Suite 500
Tyler, Texas 75702
Tel: (903) 597-8311
Fax: (903) 593-0846

Charles K. Verhoeven
charlesverhoeven@quinnemanuel.com
QUINN EMANUEL URQUHART & SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, California 94111
Tel: (415) 875-6600
Fax: (415) 875-6700

Alan Whitehurst
alanwhitehurst@quinnemanuel.com
Marissa Ducca
marissaducca@quinnemanuel.com
QUINN EMANUEL URQUHART & SULLIVAN, LLP
777 6th Street NW, 11th Floor
Washington DC 20009
Tel: (202) 538-8000
Fax: (202) 538-8100

Attorneys for Defendants Verizon Services Corp., Verizon Corporate Resources Group LLC, Verizon Corporate Services Group Inc., Verizon Data Services LLC, Verizon Media LLC, Verizon and Redbox Digital Entertainment Services, LLC, and AOL Inc.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 25th day of January, 2016.

/s/ *Michael E. Jones*
Michael E. Jones

CERTIFICATE OF CONFERENCE

I hereby certify that on January 22, 2016, counsel for the parties conferred and thereby complied with the meet and confer requirement in Local Rule CV-7(h). Plaintiffs oppose this motion.

/s/ *Michael E. Jones*
Michael E. Jones